STATE OF MICHIGAN

COURT OF APPEALS

UNPUBLISHED
May 17, 2011

In the Matter of KLW, Minor.

No. 301741
Lapeer Circuit Court
Family Division
LC No. 2010-003137-AY

Before: CAVANAGH, P.J., and TALBOT and STEPHENS, JJ.

PER CURIAM.

S. B. Waitman challenges the order terminating his parental rights to the minor child, KLW, pursuant to the Adoption Code.[1] We affirm.

Waitman initially argues that the trial court erred in terminating his parental rights where there was evidence that the child's mother prevented him from maintaining a relationship with the child. The petitioner in a stepparent adoption proceeding must prove the requisite statutory factors[2] by clear and convincing evidence before a respondent's parental rights can be terminated.[3] This Court reviews the trial court's findings of fact under the clearly erroneous standard.[4] A finding is clearly erroneous if, although there is evidence to support it, the reviewing court is left with a definite and firm conviction that a mistake was made.[5]

Waitman contends that the trial court clearly erred in finding that he had the ability to visit or communicate with the child but substantially failed to do so for a period of two or more years before the filing of the petition[6] because there was evidence that the child's mother prevented him from maintaining contact with the child. At the outset, we note that the record

[1] MCL 710.51(6).

[2] *Id.*

[3] *In re ALZ*, 247 Mich App 264, 272; 636 NW2d 284 (2001).

[4] *In re Hill*, 221 Mich App 683, 691-692; 562 NW2d 254 (1997).

[5] *Id.* at 692.

[6] MCL 710.51(6)(b).

contained evidence that it was the child, rather than the mother, who wished to terminate her telephone conversations with Waitman. While the mother admitted that she never gave her new address to Waitman, she testified that she did tell him the name of the town to which the family relocated. The mother did provide the new address to the Friend of the Court and all of the court papers listed the correct address. Waitman acknowledged that he knew the mother's married name since 2007 and there was also evidence that the child provided Waitman with the new address during a telephone conversation shortly after the family's relocation occurred. On the basis of this evidence, we find the trial court did not clearly err in finding that Waitman had the ability to have written contact with the child but that he failed to make sufficient efforts to have such communication from 2008 through May 2010. We find no error in the trial court's findings.

Waitman next asserts that the trial court erred when it failed to grant his motion for an adjournment immediately before the initiation of the proceedings on the ground that his counsel was absent due to illness. We review a circuit court's decision whether to adjourn a termination hearing for an abuse of discretion.[7]

"An adjournment or continuance of a proceeding under [the Adoption Code] shall not be granted without a showing of good cause."[8] Although there appears to have been a question regarding whether Waitman's counsel had filed an appearance in the matter, this Court concludes that the unexpected illness of his counsel constituted good cause for an adjournment and we admonish the trial court for initiating trial under these circumstances. Despite the impropriety of proceeding, because the issues were not complex and Waitman's counsel was provided the opportunity to cross-examine the child's mother when the proceedings were continued, we do not believe that the trial court's delay in granting the adjournment necessitates the setting aside of the trial court's ruling. We also find it significant that Waitman has not asserted that he was prejudiced by the delayed grant of the adjournment.[9]

Finally, Waitman argues that the court erred in denying his motion to disqualify the trial judge due to bias. We decline to address this issue as it was not properly preserved because Waitman failed to request a review by the trial court's chief judge of the denial of his motion for

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[7] *In re Jackson*, 199 Mich App 22, 28; 501 NW2d 182 (1993).

[8] MCL 710.25(2).

[9] *People v Snider*, 239 Mich App 393, 421; 608 NW2d 502 (2000); *In re Utrera*, 281 Mich App 1, 14; 761 NW2d 253 (2008).

disqualification.[10] Further, having reviewed the record we find no evidence that the trial judge was personally biased or prejudiced against Waitman.[11]

Affirmed.

/s/ Mark J. Cavanagh
/s/ Michael J. Talbot
/s/ Cynthia Diane Stephens

[10] MCR 2.003(D)(3); *Welch v District Court*, 215 Mich App 253, 258; 545 NW2d 15 (1996).

[11] MCR 2.003(C)(1); *Cain v Dep't of Corrections*, 451 Mich 470, 497-498; 548 NW2d 210 (1996).